

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7445 OF 2022

**SANTOSHI ALIAS PALLAVI SHIVRAJ DESHMUKH AND OTHERS
VERSUS
SHIVRAJ BHAGWANRAO DESHMUKH AND OTHERS**

....
Mr. S.B Bhapkar, Advocate for the Petitioners
Mr. B.A. Darak Advocate for Respondent No.1
....

CORAM : MANGESH S. PATIL, J.

DATE : 18 JULY 2022

PER COURT:-

Heard.

2. Issue notice to respondents. Learned advcate Mr. Darak waives service for respondent No.1 who is the defendant No.1 before the trial court where the petitioners have filed the suit for general partition. Incidentally, he happens to be their father.

3. At the request of the learned advocate for the petitioner as also the learned advocate for the respondent No.1, the matter is being disposed of finally at the stage of admission.

4. By the order under challenge, the trial court has refused the petitioners' prayer to amend the plaint so as to bring on record several landed properties and to claim the partition therein as well.

5. Learned advocate for the petitioners submits that it is a suit for partition. Still respondent No.1 has to cross examine the petitioners' witnesses. There are number of landed properties which had remained to be included. The petitioners cannot be deprived of the rights to claim partition therein. Expecting them now to go for another suit would give rise to multiplicity of litigation which can be avoided by permitting them to amend the petition.

6. Learned advocate Mr. Darak for respondent No.1 submits that the suit was filed way back in the year 2000. It is still awaiting decision. The petitioners are remiss. They have already amended the claim on six occasions. They have not produced on record any record to suggest that even these properties are ancestral and joint family properties. The respondent No.1 claims that those have been bequeathed to him by his mother. The petitioners do not have any right or title to claim any share. The petition may be dismissed.

7. I have carefully considered the rival submissions and perused the documents on record. The suit was filed way back in the year 2000. It is also a fact that the petitioners have amended the plaint on six occasions. Consequently, it is quite apparent that

the application for amendment has been moved belatedly.

8. However, merely because the suit was filed in the year 2000, one cannot jump to the conclusion that the application has been moved at a belated stage. Admittedly, the petitioners' evidence is still to get over. The respondent No.2 is still to cross examine their witnesses. If that is the state of affairs, irrespective of the fact that the application has been filed after more than 20 years of filing of the suit, it cannot be said that any prejudice would be caused to the respondent No.1 even if the amendment is to be carried out at this stage.

9. Nature of properties sought to be brought on record can seldomly be insisted even before the pleadings are made. It is not expected to lead some *prima facie* evidence demonstrating their nature. The petitioners cannot be prevented from averring right to have a share in the properties sought to be included which are more than 20 in number and in aggregate extend to 52 Acres 38 Gunthas.

10. Pertinently, even respondent No.1 in his say to the application for amendment is coming with a specific stand that these are the properties which are bequeathed to him by his mother.

11. In view of the above state of affairs, the order refusing to allow the amendment to be carried out merely because the suit has been pending for last more than 22 years, in my considered view, is not legally tenable.

12. The writ petition is allowed.

13. The impugned order is quashed and set aside. The application for amendment stands allowed subject to the petitioners depositing costs of Rs.5,000/- in the trial court within two weeks.

[MANGESH S. PATIL]
JUDGE

S.P. Rane